

Amendment/Response
Serial No. 09/544,349
Page 5

DISCUSSION OF AMENDMENTS TO THE CLAIMS

On page 2 of the Office Action, the Examiner indicates that claims 1-3, 6, 12, 15, 17-19, 26, 28-30, 33-35, 38 and 39 are objected to for various informalities. The changes suggested by the Examiner have been made to the claims, as indicated on the attached Examiner's Reference sheet. Based thereon, withdrawal of these objections is requested.

On pages 2-3 of the Office Action, the Examiner rejects claims 1, 7, 11, 13, 16, 18, 20, 22, 24, 25, 27-30 and 33-36 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. To address these concerns, claim 1 has been amended to more particularly point out and distinctly claim the invention by providing proper antecedent basis for terms contained therein and clarifying that the cooked cereal mass or dough in step C comes from the free cereal grain pieces of step A.

The dependency of claim 7 has been changed to claim 3 for antecedent basis purposes.

The dependency of claim 11 has been changed to claim 4 for antecedent basis purposes. Furthermore, this claim has been reworded based on the wording of claim 4.

Claim 13 has been amended to specify that the duration referred to is step B of claim 1.

Claim 18 has been amended to clarify that the pieces are sheeted using sheeting rolls.

Claim 20 has been amended to remove "of two plys" following ribbon for proper antecedent basis purposes.

Amendment/Response
Serial No. 09/544,349
Page 6

The dependency of claim 22 has been changed to claim 3 and claim 22 has been further amended to clarify that the snack is the "puffed grain based snacks" of claim 3.

The dependency of claim 24 has been changed to claim 2 for antecedent basis purposes.

The dependency of claim 25 has been changed to claim 3 for antecedent basis purposes, while also referencing the "puffed grain based" snacks.

The dependency of claim 27 has been changed to claim 12 to provide antecedent basis for "the dough extrusion step."

Each of claims 28-30 has been amended to refer back to the rapid heating of claim 3 in a manner similar to claim 7.

Claims 33, 34 and 36 have been amended to clarify that "step C of slow cooking" simply means "Step C."

Claims 33-35 have been amended to clarify that the cooked cereal dough is being pumped.

The dependency of Claim 41 has been changed to claim 3 and claim 41 has been further amended to reference the "finished grain based snacks" of claim 3 for proper antecedent basis purposes.

Amendment/Response
 Serial No. 09/544,349
 Page 7

DISCUSSION OF PATENTABILITY OF INVENTION

On page 3 of the Office Action, the Examiner rejects claims 1-41 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,291,008. Clearly there is created an ambiguity in rejecting the present claims in this manner based on the '008 General Mills patent and then rejecting the claims based at least on the same main prior art over which the '008 patent was allowed, e.g. GB 1,050,307. Presumably this inconsistency is based on the formal objections and rejections made in this case. For at least this reason, a terminal disclaimer has not been submitted at this time. However, should the Examiner consider the present claims allowable, except for the need for a terminal disclaimer, for at least the same reasons set forth in the application resulting in the '008 patent, then the Examiner is invited to contact the undersigned regarding the terminal disclaimer.

Claims 1-3, 5-10, 12-27 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB patent 1,050,307. Although thoroughly distinguished during the prosecution of the application resulting in U.S. Patent No. 6,291,008, it should further be noted that the '307 patent document discloses a process for forming RTE cereals, the cereals are formed from a dough that is cooked once and then tempered. Although the Examiner states on page 4 of the Office Action that "after the dough is processed, the dough can be cooked again", there is no teaching or suggestion in this document that there can be a second cooking step. In the present application, the cooked cereal doughs are prepared by cooking in a cooker extruder in a first cook step, followed by a second, long cook step.

In addition, GB 1,050,307 does not teach a cooking method where the starting materials are free cereal grain pieces and the product is a cereal dough having discernible grain bits from the grain pieces of the starting material, as in the present application. Although the RTE cereals disclosed in GB 1,050,307 may contain discrete particles of

Amendment/Response
Serial No. 09/544,349
Page 8

bran, germ, and small portions of berries, the size of the stating materials is not disclosed and the size of the product is not disclosed. Moreover, the patent document does not disclose discernible or visible grain bits. Importantly, this prior art does not disclose that any bran and germ particles present in the product are from any original grain pieces.

Again, during prosecution of the patent resulting in U.S. Patent No. 6,291,008, the PTO has already agreed that this GB reference does not disclose or suggest the preparation of a cereal having discernible grain bits prepared in accordance with the multi-stage cooking arrangement of the present invention. That is, it has already been recognized that this prior art fails to disclose or suggest, either taken singularly or in combination, the preparation of a cereal based product having discernible grain bits prepared in accordance with a multi-stage cooking arrangement as set forth in these claims to maintain the discernible nature of the grain bits.

On page 5 of the Office Action, the Examiner has rejected claims 4 and 11 under 35 U.S.C. 103(a) as being unpatentable over GB 1,050,307 and further in view of Matz. Matz discloses a process for steeping barley. However, it is respectfully submitted that the cited art does not teach all of the limitations of these two claims. For instance, GB 1,050,307 teaches only to have water present "in an amount less than that amount necessary to provide a substantial unabsorbed water phase..." (See column 1, line 83 through column 2, line 1). To this end, it is unclear why one would employ steeping as specified, let alone the particular substeps set forth in these claims, regardless of the simple teaching in Matz that steeping is known. Instead, it is submitted that employing the steeping of Matz in GB 1,050,307 would materially alter or destroy the product produced such that one of ordinary skill in the art would not consider this modification.

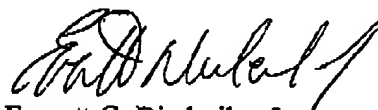
With respect to the rejection of claim 28, simply because microwave heating is known, this does not mean that one of ordinary skill in the art would look to modify GB 1,050,307 to employ this type of heating. There is no stated advantage that would be

Amendment/Response
Serial No. 09/544,349
Page 9

achieved and, in fact, this change could materially change the product produced by the '307 disclosure. In any event, it is submitted that all of the dependent claims should be readily allowed based on the distinctions between the known prior art and the subject matter of independent claim 1.

Based on the above remarks and the amendments made to the claims, it is respectfully submitted that the application should now be in clear condition for allowance such that allowance of all the claims and passage of the application issue is respectfully requested. If the Examiner should have any additional concerns regarding the allowance of this application, e.g. if the Examiner deems that a terminal disclaimer is needed, he is cordially invited to contact the undersigned at the number provided below if it would further expedite the prosecution of the application.

Respectfully submitted,



Everett G. Diederiks, Jr.
Attorney for Applicant
Registration No. 33,323

Date: April 17, 2002
DIEDERIKS & WHITE LAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192
Tel: (703) 583-8300
Fax: (703) 583-8301

**Examiner Reference
09/544,349**

1. (Once Amended) A method of preparing a snack product from a cooked cereal dough, comprising the steps of:
 - A. providing free cereal grain pieces having a particle size of about 0.5 to 2.5 mm and a moisture content of at least 18%;
 - B. cooking and forming the grain pieces into a cooked cereal dough in a cooker extruder in a first cooking step to provide an at least partially cooked cereal mass or dough having discernible grain bits from the free cereal grain pieces of step A, said forming step including adding sufficient amounts of moisture to provide the cooked cereal dough with a moisture content of about 21 to 35%; and
 - C. immediately thereafter, subjecting the cooked cereal dough to a second cooking step at a temperature of about 120 to about 194°C (248 to 380°F) for about 15 to 45 minutes to form an extended time cooked cereal dough having said discernible grain bits dispersed therein.
2. (Once Amended) The method of claim 1 additionally comprising the steps of: forming the cooked cereal dough [in] into pellets each weighing about 0.25 to 10g; and drying the pellets to a moisture content of about 8% to 14%.
3. (Once Amended) The method of claim 2 additionally comprising the [steps] step of: rapidly heating the pellets to provide puffed finished grain based snacks.
6. (Once Amended) The method of claim 1 wherein [in] steps B and C are practiced to provide the dough with a Specific Mechanical Energy ("SME") value of less than 35 watt-hours/kg of dough.
7. (Once Amended) The method of claim [2] 3 wherein the rapid heating includes deep fat frying to provide fried puffed grain based snacks having a fat content of about 15 to 40% by weight.
11. (Once Amended) The method of claim [1] 4 wherein the [agitation during steeping is intermittent] steeping substep is performed with intermittent agitation.

Examiner Reference
09/544,349

12. (Once Amended) The method of claim 11 additionally comprising the step of extruding the extended time cooked cereal dough into at least one dough rope extrudate.
13. (Once Amended) The method of claim 12 wherein [the first cooking step of] Step B is practiced in a twin screw extruder and [the first cooking step] has a duration of about 0.1 to 3 minutes.
15. (Once Amended) The method of claim 14 additionally comprising the step of tempering [while cooling] the extended time cooked cereal dough ropes for a duration of about 1 to 5 minutes while cooling from about 93.3-104.5°C (200-220°F) to about 54.4-76.6°C (130-170°F).
17. (Once Amended) The method of claim 15 additionally comprising the step of size reducing the cooled and tempered extended time cooked cereal dough to form pieces of about 2 to 8 mm.
18. (Once Amended) The method of claim 17 additionally comprising the step of sheeting the cooled and tempered extended time cooked cereal dough pieces using sheeting rolls to form a continuous cooled and tempered extended time cooked cereal dough sheet.
19. (Once Amended) The method of claim 18 additionally comprising the step of forming the continuous cooled and tempered extended time cooked cereal dough sheet into at least one ribbon.
20. (Once Amended) The method of claim 19 additionally comprising cutting the ribbon [of two plys] into a plurality of ribbons.
22. (Once Amended) The method of claim [14] 3 wherein the finished [snack has] puffed grain based snacks have a fat content of about 25% to 35%.
24. (Once Amended) The method of claim [21] 2 wherein the pellet forming step involves feeding at least one ribbon of two plys of cooked cereal dough into a rotary cutter.
25. (Once Amended) The method of claim [1] 3 additionally comprising the step of applying a topical seasoning to the [finished puffed snack products] puffed finished grain based snack.

Examiner Reference
09/544,349

26. (Once Amended) The method of claim 25 wherein [in] steps B and C are practiced to provide the dough with a Specific Mechanical Energy ("SME") value of about 10 to 25 watt-hours/kg of cooked dough.
27. (Once Amended) The method of claim [26] 12 wherein the dough extrusion step is practiced to form a plurality of cooked dough ropes each having a diameter of about 3 to 25 mm.
28. (Once Amended) The method of claim [13] 3 wherein the [rapidly] rapid heating includes microwave heating.
29. (Once Amended) The method of claim [13] 3 wherein the [rapidly] rapid heating includes hot air puffing.
30. (Once Amended) The method of claim [13] 3 wherein the [rapidly] rapid heating includes deep fat frying.
33. (Once Amended) The method of claim 32 wherein step C [of slow cooking] is practiced after step B without intermediate [puming] pumping of the cooked cereal dough.
34. (Once Amended) The method of claim 32 wherein step C [of slow cooking] is practiced after step B with intermediate [puming] pumping of the cooked cereal dough.
35. (Once Amended) The method of claim 34 wherein the intermediate [puming] pumping of the cooked cereal dough is practiced with a gear pump.
36. (Once Amended) The method of claim 32 wherein step C [of slow cooking] is practiced after step B within less than 30 seconds.
38. (Once Amended) The method of claim 1 additionally comprising the step of:
sheeting the extended time cooked cereal dough to form a continuous cooled and tempered extended time cooked cereal dough sheet.
39. (Once Amended) The method of claim 38 wherein the extended time cooked cereal dough immediately prior to sheeting has a temperature of about 77°C to 87.8°C (171°F to about 190°F).
41. (Once Amended) The method of claim [4] 3 additionally comprising the step of applying a topical coating to the puffed [pieces] finished grain based snacks.